



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

H.C.P. (MD)No.515 of 2019

Muthulakshmi

: Petitioner

Vs.

1.The Principal Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Virudhunagar District

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.

: Respondents

PRAYER: Habeas Corpus Petition under Article 226 of the Constitution of India has been filed to call for the entire records connected with the detention order of the respondent No.2 in Cr.M.P. No.06/2019 dated 14.06.2019 and quash the same and direct the respondents to produce the body or person of the detenu by name Palanisamy, son of Kottimuthu, aged about 50 years, now detained in Madurai Central Prison, before this Court and set him at liberty forthwith.

For Petitioner

: Mr.C.Ramesh

For Respondents

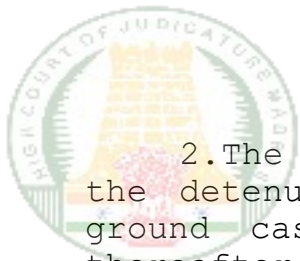
: Mr.K.Dinesh Babu

Additional Public Prosecutor

ORDER

(Order of the Court was made by T.RAJA, J.)

The present Habeas Corpus Petition is directed against the Detention Order passed by second respondent in Detention Order No.06/2019 dated 14.06.2019.

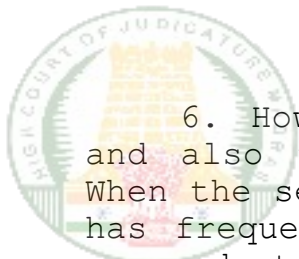


2.The Sponsoring Authority had recommended for the detention of the detenu under Act 14 of 1982 on the second adverse case and ground case registered against the detenu and the detenu was thereafter arrested in the said cases. The Detaining Authority has branded the detenu as a ''Sand Offender'' and has passed the Detention order, dated 14.06.2019.

3.Learned counsel for the petitioner, assailing the impugned order of detention, submitted that when there are three cases, namely, two adverse cases and a ground case, the detenu has obtained anticipatory bail in the first adverse case on 11.10.2017 from this Court in Crl.O.P.(MD) No.13675/2017. Thereafter, he has also filed bail application in the second adverse case in Crl.O.P.(MD) No.15973/2017 and this Court by order dated 22.11.2017 released the detenu on anticipatory bail. So far as the ground case is concerned, in Crime No.161 of 2019, which was registered against the detenu under Section 379 IPC r/w 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 and 3 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992, when the detenu has moved a bail application before the Principal and Sessions Court, Srivilliputhur, it was dismissed. As against which, he has filed a bail application before this Court and the same is pending, whereas, the second respondent in Paragraph No.5 of the grounds of detention stated that there is a real possibility of the detenu coming ut on bail by filing a bail petition in the ground case. Therefore, there is no necessity for the detenu to file further bail petition relating to the ground case, which clearly shows that the detaining authority did not record its subjective satisfaction relating to the similar case particulars in the ground case and hence, it shows the non application of mind on the part of the detaining authority, while passing the impugned detention order.

4. In support of his submissions, the learned counsel stated that in similar circumstances, this Court also, while entertaining an identical issue in HCP (MD) No.1696 of 2018, by order dated 01.02.2019, referring to the non application of mind, quashed the said order holding that the subjective satisfaction expressed by the detaining authority is vitiated.

5. A detailed counter affidavit has been filed. Supporting the impugned order, the learned Additional Public Prosecutor submitted that in Paragraph No.4(a) of the counter affidavit, the second respondent has made it clear that as two cases are similar in nature and registered in the same sections of law, he has come to the conclusion that he satisfied that there is a real possibility of the detenu coming out on bail in future. Therefore, it is not open to the learned counsel for the petitioner to say that there is a non application of mind on the part of the detaining authority.



6. However, we are unable to countenance the said submission and also the reasons mentioned in the impugned detention order. When the second respondent is well aware of the fact that the detenu has frequently committed the sand smuggling activities, the second respondent should have been more careful while passing the detention order. Having noted that the bail application filed by the detenu before this Court is pending, the second respondent could have avoided irrelevant reason given in Paragraph No.5(2) of the impugned detention order that the detenu did not file any bail application before any Court. At this juncture, it is relevant to extract the portions of Paragraph No.5 of the impugned detention order:

"5.I am aware that Thiru.Palanisamy has been remanded to judicial custody upto 28.06.2019 and lodged in the District Jail, Virudhunagar in connection with Vachakarapatty Police Station Cr.No.161/2019.

(i)The ground case in Cr.No.161/19 was registered against the accused u/s 379 IPC@ 379 Ipc r/w 21(1) of Mines and Minerals (Development and Regulation) Act, 1957 and 3 of Tamilnadu Public Property (Prevention of Damage and Loss) Act, 1992. In this case the accused did not file bail petition in any court. But in a case registered against detenu Thiru.Palanisamy, in Cr.No.462/17 having similar section of law in Vachakarapatty PS, detenu obtained bail vide Cr.M.P.NO.15973/2017 dated 22.11.2017 in Hon'ble Madurai Bench of Madras High Court. In a case having similar section of law registered in Vachakarapatty PS in Cr.No.77/19 against the accused Thiru.Manikandan, Hon'ble the Principal District Sessions Court, Srivilliputhur granted bail to him vide Cr.M.P.No.1146/19 dated 15.03.19. Both the case are identical.

Hence, I am satisfied that there is a real possibility of his coming out on bail by filing bail petition by the accused in the ground case before the concerned Court or in the higher Court, in future, since bails are granted by the court in such cases. If he comes out on bail, he will further indulge in such activities in future, which will be prejudicial to the maintenance of public order."

The above portion clearly shows that the second respondent was wrong in stating that the detenu did not file any bail application, as his bail application is pending that shows his non-application of mind. Hence, on the ground of non-application of mind, the subjective satisfaction expressed by the detaining authority is vitiated. On this score, the impugned order is liable to be quashed.

12.In the result, the Habeas Corpus Petition is allowed and the order of detention in Cr.M.P.No.06/2019 dated 14.06.2019 passed by the second respondent is quashed. The detenu, namely, Palanisamy,



son of Kottimuthu, aged about 50 years, is directed to be released forthwith, unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)

RR

To

- 1.The Principal Secretary to Government,
State of Tamil Nadu
Home, Prohibition and Excise Department,
Fort St. George, Chennai 600 009.
2. The Joint Secretary to Government,
Public(Law&Order) Department,
Fort st. George, Chennai 9
- 3.The District Magistrate and District Collector,
Office of the District Magistrate and District Collector,
Dindigul District
- 4.The Superintendent of Prison,
Madurai Central Prison,
Madurai District.
- 5.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

HCP. (MD)No.515 of 2019
12.12.2019

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